IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3623 OF 2006

In

SUIT NO.1729 OF 1993

Suri & Co. : Plaintiff

V/s.

Wallace Flour Mills Co. Ltd. : Defendant

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Mr.Prakash Mahadik i/b. Mr.S.S.Dadwal for the defendant in support.

None present for the plaintiff.

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CORAM : S.A.BOBDE, J.

DATE : JANUARY 22, 2007.

P.C.

1. This Notice of Motion has been taken out by the defendant for setting aside the ex parte order dated 19.12.1997 passed by the Prothonotary & Senior Master directing that the suit be listed as an undefended suit since the defendant failed to file a Written Statement. The suit is filed for a decree in the sum of Rs.78,878/- with interest at the rate of 18%. The writ of summons was served sometime in the year 1993. The failure to file a Written Statement appears to be mainly due to the fact

that the defendant was declared as a sick company by the BIFR sometime in the year 1990. It continued to be a sick company from the years 1990 to March 2006. It appears that on 19.12.1997 when the present suit was ordered to be listed as an undefended suit, the defendant company continued as a sick company. There was no operation in the defendant-company from the years 1989 to 1997. According to the affidavit-in-support, almost all the employees had left the employment and for these reasons, this matter could not be attended to.

2. In April 2006, the company was de-registered from the B.I.F.R. Thereafter, the company called an inspection of records to be taken to an Advocate on 26.6.2006 and came to know about the present status of the suit. This Notice of Motion was filed on 13.10.2006. Though the plaintiff has been served with this Notice of Motion on 18.1.2006, they have not filed any affidavit-in-reply nor have they appeared today.

3. In view of the uncontroverted averments in the affidavit-in-support of the Notice of Motion, I consider it appropriate in the interest of justice to set aside the order dated 19.12.1997.

4. The Notice of Motion is allowed.

5. The defendant may file Written Statement within two weeks from today.

S.A. BOBDE, J.